

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN**

UNITED STATES OF AMERICA,

Plaintiff,

v.

LAKE MICHIGAN TRANS-LAKE
SHORTCUT, INC., d/b/a LAKE MICHIGAN
CARFERRY SERVICE and S.S. BADGER,

Defendant.

Civil A. No. 1:13-cv-00317-JTN

**JOINT STIPULATION AND AGREED ORDER TERMINATING CONSENT DECREE,
SUBJECT TO PERMANENT INJUNCTION PROHIBITING DISCHARGE**

1. As set forth herein, the United States of America (United States) and Defendant Lake Michigan Trans-Lake Shortcut, Inc., d/b/a Lake Michigan Carferry Service and S.S. Badger (LMC/Badger), jointly stipulate that the prerequisites have been met for termination of the 2013 Clean Water Act Consent Decree (Dkt. # 19), as amended (Dkt. # 20) (Consent Decree or Decree), that resolved this matter on specified terms and conditions. In an email to counsel for the U.S. Environmental Protection Agency (EPA) and U.S. Department of Justice (DOJ) dated November 25, 2020, counsel for LMC/Badger requested termination of the Decree, and, in support of the request, affirmed completion of Defendant's obligations under the Decree and certified compliance in accordance with Section XXII of the Decree (email attached as Exhibit 1; certification as Exhibit 2). LMC/Badger also provided documentation substantiating its request.

2. On December 21, 2020, Michael Harris, Director of the Enforcement and Compliance Assurance Division of the EPA, Region 5, wrote the undersigned, counsel for DOJ, stating that EPA agrees that LMC/Badger has fully satisfied the requirements of the Consent Decree (letter

attached as Exhibit 3). The December 21 letter further states that EPA agrees with LMC/Badger's request for termination of the Decree, subject to the condition set forth in Paragraphs 29 and 102 of the Decree, which survives termination of the Decree. That condition requires LMC/Badger and any subsequent owner and operator of the S.S. Badger to *permanently* cease discharge of coal ash and coal ash slurry from the S.S. Badger.

3. On December 30, 2020, Interlake Holding Company announced that it secured two Great Lakes vessels in an asset acquisition that included LMC/Badger. The sale/asset acquisition resulted in the formation of a new company, a Delaware corporation, known as Lake Michigan Carferry, Inc. (Lake Michigan Carferry), which henceforth owns and operates the S.S. Badger.

4. The sale/asset acquisition agreement between LMC/Badger and its buyers, which include Lake Michigan Carferry, states, as a condition of the agreement, that the new owner/operator of the S.S. Badger, Lake Michigan Carferry, agrees to abide by the Decree's permanent injunction prohibiting discharge of coal ash and coal ash slurry from the S.S. Badger. The agreement states also that the new owner/operator shall cause any successors or future owners of the Badger to agree to abide by such condition.

5. To demonstrate commitment to the Decree provision permanently prohibiting discharge of coal ash and coal ash slurry from the S.S. Badger, the Principal and CEO for Lake Michigan Carferry is a signatory to this stipulation, along with the Principal and CEO of LMC/Badger – both entities agreeing to abide by the Decree's permanent injunction prohibiting discharge of coal ash and coal ash slurry from the S.S. Badger, notwithstanding termination of the Consent Decree via this stipulation and subsequent Court Order.

6. In a further commitment to the Decree's permanent injunction against discharge from the S.S. Badger, this stipulation provides that, should Lake Michigan Carferry enter into any

subsequent sale to, and/or acquisition of assets by, a new owner and/or operator of the S.S. Badger, the sale/asset acquisition agreement shall contain as a condition of such sale/asset acquisition that the new owner and/or operator of the S.S. Badger will abide by the permanent injunction prohibiting discharge of coal ash and coal ash slurry from the S.S. Badger, as mandated by Paragraphs 29 and 102 of the Consent Decree, notwithstanding the Decree's termination.

NOW, THEREFORE, in light of this Joint Stipulation, and for good cause appearing,
IT IS HEREBY STIPULATED, AGREED, AND ORDERED:

The Consent Decree is terminated in light of this Joint Stipulation that the prerequisites for termination have been met, and in light of LMC/Badger's and Lake Michigan Carferry's commitments to abide by the Decree's permanent injunction described herein, notwithstanding termination of the Decree. The termination, subject to the permanent injunction, shall take effect upon the Court's entry of this Joint Stipulation and Agreed Order.

IT IS SO STIPULATED

FOR THE UNITED STATES

JEAN E. WILLIAMS
Acting Assistant Attorney General
Environment and Natural Resources Division

/s/Arnold S. Rosenthal
ARNOLD S. ROSENTHAL
Senior Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice

OF COUNSEL:

NICOLE WOOD-CHI
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 5

IT IS SO STIPULATED

FOR LAKE MICHIGAN TRANS-LAKE
SHORTCUT, INC. d/b/a LAKE MICHIGAN
CARFERRY SERVICE (LMC/BADGER)

/s/Robert Manglitz
ROBERT MANGLITZ
President and Chief Executive Officer

FOR LAKE MICHIGAN CARFERRY, INC.

/s/Mark W. Barker
MARK W. BARKER
President and Chief Executive Officer

SO ORDERED

Date

United States District Judge